IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.A.No.673 of 2000

Date of Decision : 26th October, 2007.

State of H.P. …Appellant.

Versus:

Nandi Devi …Respondent.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For the respondent. Mr. R.L.Chaudhary, Advocate.

Sanjay Karol, J (Oral).

Present appeal arises out of judgment dated 12.6.2000 passed by the Judicial Magistrate Ist Class, Court No.2, Mandi, H.P. in case No. 260-I/99/98, titled as State of H.P. vs. Nandi Devi, whereby the accused has been acquitted of the charged offence.

As per the case of the prosecution, on 6.8.1997 at about 7.30 A.M. SHO, Police Station-Gohar, Karnail Singh (PW-5) alongwith LHC Durga Dutt, LHC Mahant Ram(PW-2), LHC Om Chand, and LHC Sant Ram were on patrol duty and on their way to village Latheri from village Kafur, they spotted one man and two women going towards village Latheri carrying Pitchers and "Dubba" (tin container) in their hand. On suspicion, they were apprehended and on checking it was

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

found that all of them were carrying "Lahan" (illicit liquor). The accused Smt. Nandi Devi was carrying a "Dubba" containing 13 liters of "Lahan". The patrolling party put the contraband in a bottle and took it into possession vide Ext.PW-2/A. The spot map (Ext.PW-5/A) was prepared and the Rukka (first information) Ext.PW3/B was sent on the basis of which F.I.R. (Ext.P-1) dated 6.8.1997 was registered under Section 61(1)(a) of Pubjab Excise Act with police Station Gohar. The contraband was sent for analysis and the chemical report Ext.P-A was obtained. With the completion of the investigation the challan was presented in the Court for trial. Though there is nothing on record to suggest but the ld. Additional Advocate General has stated at the bar that a separate case was filed against the other persons.

The accused was charged for an offence under Section 61 (1)(a) of the Punjab Excise Act, to which she did not plead guilty and claimed trial.

To prove their case, the prosecution examined 5 witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded.

The Court below, after examining the material on record came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt. The spot witnesses had contradicted themselves and their statements did not inspire confidence and no independent witness was associated during investigation and examined during trial.

H.C. Ramesh Kumar (PW-1), H.C Harish Chander (PW-3), LHC Karam Chand (PW-4) are the police officials who proved the registration of the F.I.R and the report of the chemical analyst.

Chemical analyst report (Ext.PA) indicates the sample sent for chemical analysis contained 19.6% proof alcohol strength.

The Court below found the statement of the remaining witnesses LHC Mahant Ram (PW-2) and Karnail Singh (PW-5) to be contradictory. It is a matter of record that none of the independent witnesses were associated at all, in spite of the fact that there were houses just adjacent to the place of occurrence, which is quite evident from the site plan (Ext.PW-5/A). There is no explanation forthcoming as to why the independent witnesses were not associated, particularly when offence is alleged to have taken place in the morning hours. In the villages the life starts quite early and that too during summer season.

In this background, the statements of PW-2 and PW-5 need to be examined. PW-2 in his examination-in-chief has deposed that accused was present at the spot and the contraband was recovered from her but in his cross examination he has shown absolute ignorance about the sequence of events about the incident. He has not been able to depose as to what was the quantity of illicit liquor which was found in the possession of all the three person who were apprehended by the patrolling party. He was also not able to state with certainty as to which of the persons including the accused were carrying the pitcher or "Dubba" seized by the patrolling party. He has also admitted that there were 3-4 houses in village Latheri adjacent to the place of occurrence of the incident. According to him the SHO, i.e. PW-5 was already having a bottle in which the seized contraband was put. This version of PW-2 is contradicted by PW-5 who has admitted that he had sent LHC Durga Dass to obtain the bottle

which was brought from village Latheri and it had taken 10 to 15 minutes for the same. It is the case of the prosecution that PW-2 was member of the patrolling party.

Further PW-5 himself has not been able to state with certainty as to which of the apprehended person were carrying how much illicit liquor. He has also not explained as to why no effort had been made to identify and associate an independent witness at the time of investigation. Further PW-5 has admitted in his cross examination that the bottle containing the illicit liquor which was sealed by him was found open and only 1 and ½ liters of contraband was left in the same. The case of the prosecution stands totally demolished by this fact.

The Court below has appreciated the evidence on record while arriving at its conclusion. In view of the contradiction in the statements of PW-2 and PW-5 who were the only spot witnesses and non joining of independent witnesses it would not be safe to convict the accused for the charged offence. The testimony of PW-2 and PW-5 does not inspire confidence so as to prove the guilt of the accused beyond reasonable doubt.

The trial Court has appreciated the material on record while arriving at its conclusion. There is no perversity in the same. The appeal is accordingly dismissed. Bail bonds are discharged.

October 26, 2007
(TM)

(Sanjay Karol),
Judge.